

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SECURITY FINANCIAL FUND,
LLC, an Idaho Limited Liability
Company,

Plaintiff,

v.
J. CRAIG BARRILE, PS,
WESLEY NAKAMOTO an unmarried
man, and JOHN DOES 1 through 10,

Defendants.

NO: 11-CV-0293-TOR

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT is Defendant J. Craig Barrile, PS's Motion for
Summary Judgment. ECF No. 13. This matter was heard with oral argument on
June 28, 2012. Erin M. Stines appeared on behalf of the Plaintiff. William L.
Cameron appeared on behalf of Defendant. The Court has reviewed the motion,
the response, the reply and is fully informed.

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1 BACKGROUND

2 Plaintiff Security Financial Fund, LLC (“SFF”) claims Defendant J. Craig
3 Barrile, PS (“Barrile”) breached his duties under RCW 61.24 *et seq* while acting as
4 a successor trustee in a foreclosure sale to which SFF was an interested party, and
5 is therefore liable for money damages in excess of \$1,100,000.¹ Barrile moves for
6 summary judgment. He argues SFF is not a party in interest because it assigned
7 beneficial interest in all the properties to Zions First National Bank (“Zions”) and
8 Zions was properly served. Also, Barrile argues that he satisfied the requirements
9 of RCW 61.24.040 by mailing the notice of the trustee’s sale to SFF’s address
10 listed on the recorded deed of trust, and that the statute imposes no duty of due
11 diligence on Barrile to conduct a further inquiry as to the correct address of SFF
12 after the notice of foreclosure was returned “vacant, unable to forward.”

13 _____

14 ¹ Barrile’s memorandum in support of motion for summary judgment offers
15 compelling authority as to the proper remedy if the Court were, in fact, to find that
16 Barrile did not properly follow the requirements of a trustee to provide notice
17 under RCW 61.24. The appropriate remedy under the statute for an improperly
18 conducted foreclosure is to request that the sale be set aside. *See e.g., Cox v.*
19 *Helenius*, 103 Wash. 2d 383, 387, 693 P.2d 683, 686 (1985). The Court does not
20 need to address SFF’s misstatement of the law on this issue because the grant of
summary judgment to Barrile renders it moot.

1 SFF contends that it is a real party in interest despite having assigned its
2 beneficial interest in the properties to Zions. Further, it argues Barrile breached his
3 statutory duty as a successor trustee under RCW 61.24.040 when he failed to
4 perform an additional search for SFF's correct address after the notice of
5 foreclosure sent by Barrile to SFF was returned as "vacant, unable to forward."

6 **FACTS**

7 On August 15, 2007, SFF loaned Comstock \$1,100,000 for the development
8 of property located in Stevens County, Washington, and secured repayment of that
9 loan by obtaining individual deeds of trust against tracts of land in said property.²
10 ECF No. 1 at 3. On the same day, Defendant Nakamoto also made a loan to
11 Comstock in the amount of \$580,500, securing repayment of the loan with a deed
12 of trust against the same property. *Id.* SFF's loan was recorded in Stevens County
13 just before Nakamoto's on August 15, 2007. *Id.*

14

15 ² SFF's complaint and their response to the motion for summary judgment appear
16 to misstate the date that Nakamoto loaned money to Comstock. They repeatedly
17 state that Mr. Nakamoto made his loan "on the same day Comstock refinanced the
18 SFF Loan" (emphasis added). ECF 1 at 3. However, the loan was refinanced on
19 October 12, 2007, while Nakamoto's loan was recorded on August 15, 2007. ECF
20 1 at 2. The date of Nakamoto's loan is actually the same day as the Plaintiff's first
loan to Comstock for \$1,100,000 on August 15, 2007.

1 Approximately 2 months later, around October 12, 2007, SFF loaned
2 Comstock \$1,608,000 to refinance and pay off their earlier loan to Comstock for
3 \$1,100,000, and loan them an additional \$500,000. ECF No. 1 at 2-3. Again, SFF
4 secured repayment of the loan with individual deeds of trust on the property. *Id.*
5 The deeds of trust were recorded on October 15, 2007. *Id.* On November 8, 2007
6 SFF assigned beneficial interest in its loan to Zions. ECF No. 33-5. Zions
7 recorded the assignment on April 3, 2009. ECF No. 33-5. On May 5, 2009,
8 Defendant Barile, the successor trustee, issued Notice of Trustee's Sale ("Notice")
9 to Comstock, Zions, SFF, and others. ECF No. 14 at 2. Barile mailed the Notice
10 to SFF at an address listed on SFF's recorded deed of trust that showed up on his
11 title report. ECF No. 33-1, 33-4. SFF's copy of the Notice was returned to Barile
12 marked "vacant, unable to forward." ECF No. 33-11. On August 7, 2009, Barile
13 foreclosed Nakamoto's deed of trust, and sold the property to Nakamoto for
14 \$586,604. ECF No. 14 at 3.

SUMMARY JUDGMENT STANDARD

16 The court may grant summary judgment in favor of a moving party who
17 demonstrates “that there is no genuine dispute as to any material fact and that the
18 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The
19 party moving for summary judgment bears the initial burden of showing the
20 absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S.

1 317, 323 (1986). The burden then shifts to the non-moving party to identify
2 specific facts showing there is a genuine issue of material fact. *See Anderson v.*
3 *Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). For purposes of summary
4 judgment, a fact is “material” if it might affect the outcome of the suit under the
5 governing law. *Id.* at 248. Further, a material fact is “genuine” only where the
6 evidence is such that a reasonable jury could find in favor of the non-moving party.
7 *Id.* The court views the facts, and all rational inferences therefrom, in the light
8 most favorable to the non-moving party. *Scott v. Harris*, 550 U.S. 327, 378
9 (2007).

DISCUSSION

11 The Washington Deed of Trust Act governs the non-judicial foreclosure of
12 deeds of trust. Wash. Rev. Code 61.24 *et seq.* Under RCW 61.24.040(1)(b), a
13 trustee conducting a foreclosure sale is required to take appropriate steps to notify
14 parties with an interest in the deed of trust as follows:

- 15 (a) Record a notice in the form described in (f) of this subsection in the
16 office of the auditor in each county in which the deed of trust is recorded;
- 17 (b) To the extent the trustee elects to foreclose its lien or interest, or the
18 beneficiary elects to preserve its right to seek a deficiency judgment
19 against a borrower or grantor under RCW 61.24.100(3)(a), and if their
20 addresses are stated in a recorded instrument evidencing their interest,
lien, or claim of lien, or an amendment thereto, or are otherwise known
to the trustee, cause a copy of the notice of sale described in (f) of this
subsection to be transmitted by both first-class and either certified or
registered mail, return receipt requested, to the following persons or their
legal representatives, if any, at such address:

(i) The borrower and the grantor;

(ii) The *beneficiary of any deed of trust or mortgagee of any mortgage*, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale.

Wash. Rev. Code 61.24.040 (emphasis added).

A. Does SFF hold a beneficial interest in the deed of trust?

Barile argues that SFF is not a party in interest because it assigned “all of [its] right, title, and interest as beneficiary, in, to and under that certain Deed of Trust executed by Comstock Natural Resources, LLC and Darold J. Sauer” to Zions on November 8, 2007. ECF No. 33-5. SFF responds that this assignment of beneficial interest was “recorded to secure an otherwise unrelated line of credit SFF had with Zions.” ECF No. 32 at 8. SFF also notes that Zions reassigned beneficial interest in the deed of trust back to SFF on April 10, 2010, who subsequently recorded the reassignment on June 1, 2012. *Id.*

The statute specifically identifies “the beneficiary of any deed of trust” as a party entitled to receive notice of a foreclosure sale. Wash. Rev. Code 61.24.040(1)(b)(ii). SFF assigned the entirety of its beneficial interest in the deed of trust to Zions on November 8, 2007, and Zions recorded this assignment of interest on April 3, 2009. ECF No. 33-5. According to the exact terms of the

1 recorded assignment of beneficial interest by SFF to Zions, SFF was no longer the
2 “beneficiary of the deed of trust”, and therefore Barrile was under no obligation to
3 notify SFF of the trustee sale under the dictates of RCW 61.24.040.

4 SFF argues that it somehow maintained its status as a party in interest
5 because the assignment of beneficial interest in the deed of trust was merely to
6 secure a line of credit with Zions. This argument is unpersuasive. Whether or not
7 Zions and SFF had a private agreement as to the purpose of the assignment of
8 beneficial interest does not change the legal analysis of this issue. Moreover, the
9 fact that Zions reassigned the beneficial interest in the deed of trust back to SFF is
10 irrelevant because it happened more than a year after the foreclosure sale at issue.
11 At the time of the trustee’s sale, SFF had no beneficial recorded interest in the deed
12 of trust, and therefore Barrile was under no statutory obligation to send the Notice
13 to SFF.

14 **B. Did Barrile fulfill his duties as trustee and send proper notice?**

15 Despite the fact that SFF no longer held a beneficial interest in the deed of
16 trust, based on the title report, Barrile sent a Notice to the address listed on SFF’s
17 deeds of trust. ECF No. 32 at 4-5. SFF maintains that when the Notice was sent
18 back to Barrile as “vacant, unable to forward,” Barrile had a statutory duty as
19 trustee to search for SFF’s correct mailing address. Essentially, SFF is arguing that
20 Barrile must provide actual notice of the foreclosure sale to SFF in order to satisfy

1 the notice requirements, and that he neglected to do so in this case. The Court
2 finds that the plain language of RCW 61.24.040, as well as Washington case law,
3 imposes no such duty on a successor trustee.

4 When interpreting a statute, the court's objective is to ascertain and give
5 effect to the intent of the legislature by looking at the plain meaning of the words
6 used in the statute. *Amresco Independence Funding, Inc. v. SPS Properties, LLC*,
7 129 Wash. App. 532, 536, 119 P.3d 884, 886 (2005). When the words are plain
8 and unambiguous, the statute is applied as written. *Id.* In the instant case, RCW
9 61.24.040 instructs a successor trustee to send a copy of the notice of foreclosure
10 to an address “stated in a recorded instrument evidencing their interest” or “are
11 otherwise known to the trustee.” Wash. Rev. Code 61.24.040(1)(b). On its face,
12 the statute imposes no further obligation to perform due diligence in locating a
13 party with an interest in a notice of foreclosure.

14 The Deed of Trust Act was enacted by the legislature to further three
15 objectives. “First, the nonjudicial foreclosure process should remain efficient and
16 inexpensive. Second, the process should provide an adequate opportunity for
17 interested parties to prevent wrongful foreclosure. Third, the process should
18 promote the stability of land titles.” *Cox v. Helenius*, 103 Wash. 2d 383, 387, 693
19 P.2d 683, 685-86 (1985). However, because the statute allows a trustee to
20 foreclose on a deed of trust without judicial process, courts must strictly construe

1 The Deed of Trust Act. *Id.* at 388-89, 686 (fiduciary duty of trustee is
2 “exceedingly high”); *see also Albice v. Premier Mortgage Services of Washington,
3 Inc.*, 276 P.3d 1277, 1281 (2012) (holding trustee lacked statutory authority to hold
4 a non-judicial foreclosure more than 161 days after the date in the notice of
5 trustee’s sale, and invalidating the sale). SFF argues that Barile failed to meet the
6 legislative goals of the Deed of Trust Act when he failed to further inquire into
7 SFF’s correct mailing address, because SFF did not have adequate opportunity to
8 prevent wrongful foreclosure. However, SFF offers no case law in support of this
9 argument.

10 In fact, Washington case law consistently interprets RCW 61.24.040 to
11 impose no duty on a trustee to provide actual notice of a foreclosure to an
12 interested party. *See Amresco*, 129 Wash. App. at 540, 119 P.3d at 888 (holding
13 trustee fully complied with statute by sending notice only to interest holder’s legal
14 representative); *see also In re Arrington*, 2012 WL 1038742 *4 (Wash. App. Div. 1
15 2012) (finding trustee was not required to provide actual notice of a foreclosure
16 sale under 61.24.040, but only to comply with the requirements of the statute).

17 In *Morrell v. Arctic Trading Co., Inc.*, the court found no “due diligence”
18 was imposed by RCW 61.24.040, “which instead specifies the steps that must be
19 taken in attempting to notify interested parties.” *Morrell v. Artic Trading Co., Inc.*,
20 21 Wash. App. 302, 304, 584 P.2d 983, 985 (1978). The court held that when

1 attempting to notify an interested party of an impending foreclosure sale, a trustee
2 was not obligated to search for an address when no address was found in deed of
3 trust documents. *Id.* SFF attempts to distinguish the facts of *Morrell* from the
4 instant case because Barrile had a prior relationship with the owner of the real
5 property and therefore could have contacted said owner to obtain SFF's current
6 address. ECF No. 32 at 9-10. However, it offers no legal authority to support the
7 proposition that a previous relationship between the successor trustee and the
8 property owner imposes a duty on the trustee to conduct further inquiry into the
9 correct mailing address.

10 Washington case law only requires the successor trustee to follow the
11 requirements outlined in the statute and notify interested parties at an address
12 provided in a recorded instrument evidencing their interest. It is undisputed that
13 Barrile sent a copy of the Notice to the address listed on SFF's recorded deed of
14 trust. Thus, despite the return of the Notice as "vacant, unable to forward", Barrile
15 fulfilled the requirements of the statute, and he had no further duty to perform an
16 additional search for SFF's updated address.

17 Even in the light most favorable to SFF, the Court finds no genuine issues of
18 material fact which would preclude an award of summary judgment in Barrile's
19 favor. Under RCW 61.24.040, Barrile was not obligated to notify SFF of the
20 foreclosure sale because SFF no longer held a beneficial interest in the deed of

1 trust. Further, SFF offers no specific facts showing that Barrile did not fully
2 comply with the statute by sending a copy of the Notice via first class and certified
3 mail to SFF at the address listed in the recorded deed of trust. Accordingly,
4 Defendant Barrile is entitled to summary judgment and the Court dismisses
5 Defendant Barrile from this action.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendant's Motion for Summary Judgment, ECF No. 13, is

GRANTED.

2. All claims against Defendant J. Craig Barrile, PS are **DISMISSED**.

The District Court Executive is hereby directed to enter this Order and

provide copies to counsel.

DATED this 3rd day of July, 2012.

s/ Thomas O. Rice

THOMAS O. RICE
United States District Judge